



**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND  
FORT MCPHERSON, GEORGIA 30330-6000

REPLY TO  
AFLG-PR ATTENTION OF

3 June 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 99-28

1. This CIL contains information on the following subjects:
  - a. Use of Multiple Award Task Order Contracts,
  - b. Government Purchase Card Delinquencies,
  - c. Service Contract Act Health and Welfare Fringe Benefits Changes, and
  - d. Release of Purchase Cardholder List.
2. Use of Multiple Award Task Order Contracts. Reference memo, DP/CPA, 30 April 1999, SAB (encl 1). This memo, signed by Ms. Eleanor Spector, Director of Defense Procurement, clarifies and stresses the Department of Defense policy of taking full advantage of competition by this contracting approach.
3. Government Purchase Card Delinquencies. Reference memo, SAAL-PI, 27 May 1999, SAB (encl 2). In this memo, Dr. Oscar emphasizes the importance of minimizing delinquencies within the Purchase Card Program. He attributes the leading factors to poor communications and lack of mutual understanding of the roles of those involved in the overall purchase card process. For additional information, please contact Ms. Gwen Miles at DSN 367-5486.
4. Service Contract Act Health and Welfare Fringe Benefits Changes. Reference memo, DAJA-KL, 24 May 1999, SAB (encl 3). Subject memo explains the changes to the Service Contract Act Health and Welfare Fringe Benefits which became effective 1 June 1999.

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SUBJECT: Contracting Information Letter (CIL) 99-28

5. Release of Purchase Cardholders List.

a. References:

(1) FOIA guidance in DOD 5400.7-R.

(2) Email message, dated 18 Feb 99, from Ms. Suzanne Council, DA FOIA Administrator, Subject: Release of IMPAC Purchase Card Lists (encl 4).

(3) Memorandum, AFLG-PR, dated 31 Jul 95, Subject: FOIA release of information to Non-Government Entities (encl 5).

b. This memorandum provides information relative to the release of IMPAC cardholder lists and information to vendors and non-government entities. We have received several requests under the FOIA for a list of cardholders authorized to use the International Merchant Purchase Authorization Card (IMPAC). An email dated 18 February 1999 from Ms. Suzanne Council, OGC, HQDA states, "You can release name and duty address of official government credit card holders as well as office phone numbers if they are on your (existing) list".

c. There is no obligation to create a record if numbers are not on the existing list. You must, however, release the name, grade and duty address of a named cardholder on the existing list, unless the name and duty address (postal and/or e-mail) relates to DOD military and civilian personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. The name and duty addresses of those soldiers/civilian employees in the sensitive, overseas or routinely deployable units should be scrubbed from existing IMPAC credit card lists. This may be done by going to the source of the information and explaining the exempt nature of the cardholders in this special category.

d. Regardless of the unit of assignment, no home addresses of either military or civilian cardholders, including private email addresses, are releasable without the expressed written consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name. Release of this personal information, without

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SUBJECT: Contracting Information Letter (CIL) 99-28

express written consent, would be a clearly unwarranted invasion of personal privacy.

e. Please pass a copy of this information to your installation FOIA Officials. If additional information is needed, contact Ms. Gwendolyn Miles, DSN 367-5486, or email [milesghwen@forscom.army.mil](mailto:milesghwen@forscom.army.mil).



4 Encls  
as

TONI M. GAINES  
Chief, Contracting  
Division, DCSLOG  
Principal Assistant Responsible  
for Contracting

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

April 30, 1999

DP/CPA

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
EXECUTIVE DIRECTOR, ACQUISITION AND BUSINESS  
MANAGEMENT, OASN (RD&A)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DEPUTY DIRECTOR, (ACQUISITION), DEFENSE  
LOGISTICS AGENCY

SUBJECT: Use of Multiple Award Task Order Contracts

A recent Department of Defense Inspector General (DODIG) report ("DoD Use of Multiple Award Task Order Contracts," No. 99-116, dated April 2, 1999) raised the concern that the Department may not be obtaining full benefit from the use of competition in multiple award task order arrangements. I want to ensure that the Department takes full advantage of the competition made possible by this contracting approach.

Multiple award task order contracts shall only be used in situations in which all contractors are generally capable of performing all work under the proposed contract. This does not mean that all awardees must be equally capable in all areas. What must be avoided are situations in which some or all awardees specialize exclusively in one or a few areas within the broader statement of work, thus creating the likelihood that tasks in those areas will be awarded on a sole-source basis.

The DoDIG audit found instances in which a task order was awarded on a sole-source basis as a logical follow-on to a sole-source order. I must remind you that FAR 16.505(b)(2)(iii) permits the award of sole-source orders as logical follow-ons to orders already under contract only when all awardees were given a fair opportunity to be considered for the original order.

The DoDIG audit cited instances in which it was not clear that price had been considered in the ordering decision. Except for architect-engineer contracts, price shall be considered during the fair opportunity to be considered process. While



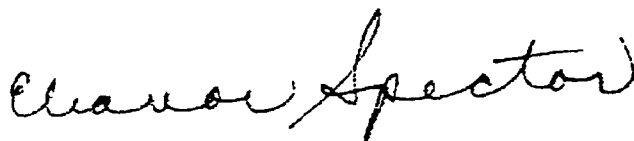
ENCL 1

awards should be made on the basis of best value, award decisions shall take price into consideration.

The DODIG also cited examples of ordering decisions that were undocumented or were documented poorly. While this is intended to be a streamlined process, this does not mean that appropriate documentation can be ignored. Critical decisions, such as use of one of the exceptions from the fair opportunity to be considered process described at FAR 16.505(b)(2) or the selection of a higher priced proposal because of its greater technical merit, must be documented in sufficient detail to be convincing.

The DoDIG report also called attention to the unreliability of the information on orders under multiple award task order arrangements generated by the DD 350 system. My staff has verified that this is the case. The DD 350 system does potentially offer visibility into the extent to which orders under multiple award task order arrangements are being made competitively. This potential can only be realized, however, if contracting personnel accurately enter the information called for. I expect you to emphasize the need to do so to your contracting personnel. My staff will be monitoring this DD 350 information and significant instances of clearly incorrect information may be called to the attention of your contracting activities.

The flexibility and efficiency provided by the use of multiple award task order contracts can contribute strongly to the overall efficiency of the defense procurement system. I do not want to jeopardize the ability to continue to use this approach by incautious and inattentive application of this authority.

A handwritten signature in cursive script, reading "Eleanor Spector".

Eleanor R. Spector  
Director of Defense Procurement



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH DEVELOPMENT AND ACQUISITION  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

JUN 1 1999

27 MAY 1999

REPLY TO  
ATTENTION OF

SAAL-PI

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Government Purchase Card Delinquencies

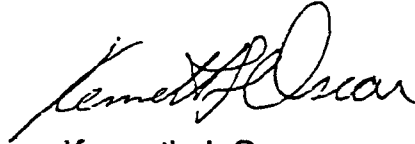
I recently attended an In-Process Review of the DOD Government Purchase Card Program. Mrs. Eleanor Spector, Director, Defense Procurement, conducted the review with Mr. Nelson Teye, Deputy Chief Finance Officer, OUSD(C), to specifically focus on purchase card delinquencies. Mrs. Spector noted that the Army is diligently working its delinquencies and has taken steps to identify and revise the processes, which contribute to them.

I believe the major factors leading to delinquencies are poor communications and a lack of mutual understanding of the roles of those involved in the overall purchase card process (funding, purchasing, certifying and disbursement). Resource Managers must ensure that adequate funds are available in the accounting records prior to the disbursement so Defense Finance and Accounting Service (DFAS) pre-validation requirements are met. Agency Program Coordinators must ensure that Billing Officials (BOs) forward their certified statements to the appropriate payment office. Cardholders must have positive fund control to ensure they do not exceed the funding provided by the resource manager. This is especially important if the 30-day spending limit is not the same as the available funding. Billing Officials must aggressively monitor their accounts and follow guidance for pay and confirm in Purchase Card Memorandum # 3. Additionally, Billing Officials must out-process with the Agency/Organization Purchase Card Coordinator (AOPC) when rotating or changing stations.

We can minimize delinquencies within the Army by being cognizant of these factors and ensuring that our AOPC's and BO's actively monitor their accounts. AOPC's must partner with Resource Management, DFAS, and the cognizant BOs to assertively track and follow-up on all accounts with U.S. Bank, both new and old, to ensure that Army bills are timely paid. Failure to do so may well result in delinquent or suspended accounts. Working together assertively, we can meet the July 1, 1999 deadline imposed by Mrs. Spector of eliminating all purchase card delinquencies.



Please remind your A/OPC's that delinquent accounts are posted on the DOD Purchase Card web page at <http://purchasecard.sarda.army.mil/payments.htm>.



Kenneth J. Oscar  
Deputy Assistant Secretary of the Army  
(Procurement)

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**HEADS OF CONTRACTING ACTIVITY**

Administrative Assistant to the Secretary of the Army, 105 Army  
Pentagon, Washington, DC 20310-0105

Assistant Deputy Chief of Staff for Research, Development and  
Acquisition, Contracting and Program Management, HQ, U.S. Army  
Materiel Command, ATTN: AMCRDA-A, 5001 Eisenhower Avenue,  
Alexandria, VA 22333-0001

Commander, U.S. Army Aviation and Missile Command, ATTN:  
AMSAM-CG, Redstone Arsenal, AL 35898-5000

Commander, U.S. Army Communications-Electronics Command,  
ATTN: AMSEL-CG, Fort Monmouth, NJ 07703-5000

Commander, U.S. Army Industrial Operations Command, ATTN:  
AMSIO-CG, Rock Island, IL 61299-6000

Commander, U.S. Army Tank-automotive and Armaments Command,  
ATTN: AMSTA-CG, Warren, MI 48397-5000

Commanding General, Forces Command, ATTN: AFCG, Fort  
McPherson GA 30330-6000

Deputy Commanding General, Third United States Army/ARCENT,  
1881 Hardee Avenue S.W., Fort McPherson, GA 30330-1064

Deputy Chief of Staff for Force Sustainment, U.S. Army Medical  
Command, ATTN: DASG-ZD, 2050 Worth Road, Suite 3, Room  
229, Fort Sam Houston, TX 78234-6003

Commander, U.S. Army Intelligence & Security Command; ATTN:  
IACG, Fort Belvoir, VA 22060-5246

Commander, U.S. Army Medical Research and Materiel Command,  
ATTN: MCMR-ZA, 504 Scott Street, Fort Detrick, MD 21702-5012



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH DEVELOPMENT AND ACQUISITION  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

JUN 1 1999

REPLY TO  
ATTENTION OF

DAJA-KL

24 May 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Service Contract Act Health and Welfare Fringe Benefits Changes

Enclosed is a memorandum from the Department of Labor, Wage and Hour Division, which explains the changes to the Service Contract Act Health and Welfare Fringe Benefits that will be effective as of June 1, 1999. Please pass this information to each contracting office under your command.

Thank you for your assistance in this matter. If you have any questions regarding this memorandum, please contact Ms. Moore by telephone at (703) 588-6756 (DSN prefix 425) or by electronic mail at [mooreae@hqda.army.mil](mailto:mooreae@hqda.army.mil).

ALFRED E. MOREAU  
Labor Advisor,  
OASA (RDA)

Encl

DISTRIBUTION:

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Fort McPherson, Georgia 30330-6000  
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Commander, U.S. Army Corps of Engineers, ATTN: CECC-L,  
20 Massachusetts Avenue, Washington, DC 20314-1000  
Commander, U.S. Army Materiel Command, ATTN: AMCCC-G,  
5001 Eisenhower Avenue, Alexandria, Virginia 22333-0001  
Commander, U.S. Army Military District of Washington,  
ATTN: ANPC, Ft. McNair, Washington, DC 20319-5050  
Commander, U.S. Army, Pacific, ATTN: APAM, Fort Shafter,  
Hawaii 96858-5100  
Chief, National Guard Bureau, Departments of the Army and Air  
Force, ATTN: NGB-CP, 5109 Leesburg Pike, Falls Church,  
Virginia 22041-3201



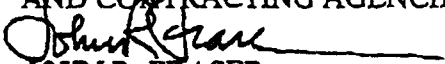




MAY 24 1999

MEMORANDUM NO. 192

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT  
AND CONTRACTING AGENCIES OF THE DISTRICT OF COLUMBIA

FROM:   
JOHN R. FRASER  
DEPUTY ADMINISTRATOR

SUBJECT: Service Contract Act Health and Welfare Fringe Benefit Changes

In accordance with the requirements of section 4.52 of Regulations, 29 CFR Part 4, the prevailing health and welfare fringe benefits issued under the McNamara O'Hara Service Contract Act (SCA) will be increased on June 1, 1999. As prescribed by the phase-in schedule provided in section 4.52(b), the current fringe benefit rate of \$1.39 per hour will be increased by one-half of the difference between the current rate and the total benefit amount derived from the latest Bureau of Labor Statistics Employment Cost Index (ECI) summary of Employer Costs for Employee Compensation. Applying this methodology (one-half of the difference between \$1.39 and \$1.87), produces a new SCA health and welfare single benefit rate of \$1.63 per hour or \$65.20 per week or \$282.53 per month.

**Solicitation/Contracts Affected**

All Invitation for Bids opened, or other service contracts awarded on or after June 1, 1999, must include an updated SCA WD issued in accordance with the regulatory health and welfare fringe benefit determination methodology. In order to facilitate processing of solicitations that currently contain WDs with the \$1.39 per hour benefit level, contracting agencies may make pen and ink changes to effect the fringe benefit rate increases on the WDs that have been issued for the procurement rather than await receipt of a revised WD with the new fringe benefit rate.

## **Wage Determinations for the State of Hawaii**

Under section 2(a)(2) of the Service Contract Act, fringe benefit payments that are required by state law may not be used to satisfy the employer's fringe benefit obligations. In Hawaii, most employers are required by law to provide health insurance coverage for their employees. Therefore, employer contributions that are made to satisfy the employer's obligations under the Hawaii mandated pre-paid Health Care Act may not be credited toward meeting the contractor's obligations under SCA. The SCA WD's have addressed this issue in the past by excluding the health insurance portion. The current Hawaii benefit level is being phased-in in the same manner as all other benefits throughout the United States. Currently, most Hawaii WD's specify a health and welfare benefit amount of \$.48 per hour.

Consistent with past practices, and in recognition of the fact that Hawaii law requires employers to provide health care coverage for most employees, SCA WD's for Hawaii will continue to exclude the health insurance portion of the benefits for all employees on whose behalf the employer provides benefits pursuant to the Hawaii prepaid Health Care Act. It has recently come to our attention, however, that employers are not required to make and in fact do not make in some instances contributions for certain employees under the Hawaii law, and the reduced fringe benefit level is not appropriate for these employees. Therefore, effective June 1, 1999, the new SCA health and welfare fringe benefit rate for Hawaii will be:

**\$.68 per hour for all employees on whose behalf the contractor provides health care benefits pursuant to the Hawaii prepaid Health Care Act. For those employees who are not receiving health care benefits mandated by the Hawaii prepaid Health Care Act, the new health and welfare benefit rate will be \$ 1.63. For information regarding the Hawaii prepaid Health Care Act, please contact the Hawaii Employers Council; P.O. Box 29699, Honolulu, HI 96820-2099; telephone number 1-808-836-1511.**

## Bruner, Sandra - DCSLOG

---

From: Council, Suzanne F., Ms., OGC [CouncSF@hqda.army.mil]  
Sent: February 18, 1999 2:10 PM  
Subject: 'FORSCOM(BRAGG/CAMPBELL)BRUNER,SANDY'  
FW: Release of IMPAC credit card lists

- > Questions: We get alot of requests for IMPAC credit card lists. We
- > recently put the list of names and agencies on the Army's electronic
- > reading room. However, it has come to my attention that there may
- > possibly be some people on the list in either sensitive positions or in
- > units which are routinely deployable. Therefore, I have taken the list
- > off the electronic reading room for security reasons. But I am uncertain
- > as to whether we should release the names and agencies in hard copy in
- > response to a written FOIA request. The argument is that release of a
- > hard copy of the list is easily tracked, and therefore, ok to release. Do
- > you agree?
- >
- > Response: You can release name and duty address of official government
- > credit card holders as well as office phone numbers if they are on your
- > list. There is no obligation to create a record if numbers are not on the
- > list. You have to release the name, grade and duty address unless the
- > name and duty address (postal and/or e-mail) of DoD military and civilian
- > personnel are assigned to units that are sensitive, routinely deployable,
- > or stationed in foreign territories. Home addresses, including private
- > e-mail addresses, are normally NOT releaseable without the consent of the
- > individuals concerned. This includes lists of home addresses and military
- > quarters' addresses without the occupant's name. Release would be a
- > clearly unwarranted invasion of personal privacy.
- >
- > The names and duty addresses of those soldiers/civilian employees in the
- > sensitive, overseas or routinely deployable units should be scrubbed on
- > IMPAC credit card lists. This could be done if you go to the source of
- > the information (and should be done because you get lots of requests for
- > this info). Afterwards - put the list on the Web.
- >
- > According to the FOUO guidance in DoD 5400.7-R, the list that is sensitive
- > should be marked FOUO. The release of the hard copy - without doing the
- > scrub - contributes to the security risks we are now taking seriously
- > (ways to get open source information that can be compiled to produce non
- > releasable information).
- >
- > The result of releasing an "un-scrubbed" is that the requester begins to
- > try to locate these credit card holders to solicit them for business
- > enterprises. If the individual is in a sensitive unit - that may not be a
- > good thing. Also, their status, or location could be revealed as a result
- > of the subsequent search or, even, by non-responsive answers to subsequent
- > FOIA requests.
- >



DEPARTMENT OF THE ARMY  
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND  
FORT MCPHERSON, GEORGIA 30330-6000



REPLY TO  
ATTENTION OF

AFLG-PR (715)

31 Jul 95

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: FOIA Release of Information to Non-Government Entities

1. References:

a. Memorandum, General Services Administration, dated 14 Jun 95, SAB. (Enclosed)

b. Memorandum, AFLG-PR, dated 12 Oct 94, subject: Government Credit Card Program.

2. This memorandum provides information relative to the release of I.M.P.A.C. cardholder information to vendors and non-government entities. We have received numerous requests under the FOIA for a list of cardholders authorized to use the International Merchant Purchase Authorization Card (I.M.P.A.C.). The move to expand the use of the I.M.P.A.C. and the resultant high percentage of use for small purchases has caught the attention of businesses wanting to capture at least a portion of this market. Some installations have been releasing these lists; however, when the information has been denied by the installation and referred to this office, we have denied the information and forwarded file to Department of the Army (DA) for a final decision as to the releasability of the information contained in the lists.

3.. Reference 1.a provides guidelines regarding the releasability of I.M.P.A.C. cardholder and report information to non-government entities. The reports and program transaction data provided by Rocky Mountain Bank Card System (RMBCS) to government agencies are considered proprietary in nature and shall not be released to non-government entities without the express written consent of RMBCS.

4. Reference 1.b, paragraph 5 is superseded by the changes in this memorandum. Since the information contained in the lists maintained by installations vary from installation to installation, DA Office of General Counsel has determined the following guidelines for FOIA information:

AFLG-PR

SUBJECT: FOIA Release of Information to Non-Government Entities

a. Information that is releasable: (1) cardholder's name, (2) duty position (as long as its release would not become a security issue, see AR 25-55, paragraph 3-200), (3) cardholder's office address and (4) approving official's name.

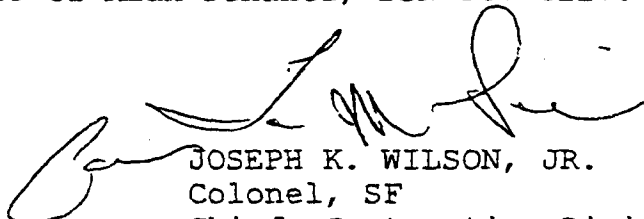
b. Information commonly on lists that is not releasable: (1) credit card account number, (2) cardholder's office or home phone number, (3) cardholder's home address, and (4) cardholder's social security number.

c. Information on cardholders who are stationed out of the United States is not releasable.

5. The GSA Contract Guide for the I.M.P.A.C. Program is being revised and is expected to be available in August. The revised guide is expected to reflect the prohibition on release of the reports generated by RMBCS.

6. Please pass a copy of this information to your installation FOIA Official. If additional information is needed, contact Judy Armstrong, DSN 367-5559 or Alan Schantz, DSN 367-6227.

Encl



JOSEPH K. WILSON, JR.

Colonel, SF

Chief, Contracting Division, G4  
Principal Assistant Responsible  
for Contracting

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General Services Administration  
Federal Supply Service  
Washington, DC 20406

June 14, 1995

MEMORANDUM FOR AGENCY/ORGANIZATION PROGRAM COORDINATORS  
I.M.P.A.C. Card

FROM: DORIS L. MARSH *D. Marsh*  
CONTRACTING OFFICER

SUBJECT: FOIA Release of Information to Non-Government Entities

There have been several inquiries from Government users regarding the releasability of I.M.P.A.C. card, cardholder, and report information to non-government entities. This memorandum serves to provide general guidelines in this matter as it relates to the terms and conditions of GSA's contract with Rocky Mountain BankCard System (RMBCS).

1. RMBCS considers sales volume data furnished in reports and program transaction data provided to Government agencies to be proprietary in nature. The reports listed below shall not be released to non-Government entities without the express written consent of the contractor:

<u>Report Number</u>	<u>Report Name</u>
G503	Daily Report Generation List
F107	Disputed Transaction Status Report
F109	Invoice Status Report
G022	New Account Report
G066	Cardholder Activity Report
G067	Daily Transaction List
G077	Account Information
G088	Quarterly Declined Transaction Report
G089	Statistical Summary Report
R009	Cardholder Alter List
R032	Report of Lost/Stolen Transactions
R063	I.M.P.A.C. Financial Summary
R090	Business Account Summary
R095	Approving Official Summary Report
R342	Card Activation Acknowledgment Outstanding
R803	Prenotification of Reissue of Credit Cards
R900	Merchant Activity Report
997/998	Statement Detail Record Layout



2. In addition to the reports listed above, RMBCS also considers its Cardholder Statement and Cardholder Disputed Transaction Status Memo to be proprietary in nature and shall not be released to non-Government entities without the express written consent of the contractor.
3. For the releaseability of any other information related to your agency's policies, practices and procedures regarding your agency's use of the Government I.M.P.A.C. card, you should consult your internal agency procedures for administering the Freedom of Information Act (5 U.S.C. 552, FOIA) and your legal counsel, as applicable.
4. If we can be of any assistance or you have further questions, please call Doris Marsh at (703) 305-7564, Barbara Biebl at (703) 305-6112 or Rebecca Koses at (703) 305-5071. Thank you.

a. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

b. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

c. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

d. Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (references (k) and (l)).

e. Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants, 10 U.S.C. 1102 f (reference (m)).

f. Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128 (reference (n)).

g. Protection of Intelligence Sources and Methods, 50 U.S.C. 403-3(c)(5) (reference (o)).

h. Protection of Contractor Submitted Proposals, 10 U.S.C. 2305(g) (reference (p)).

i. Procurement Integrity, 41 U.S.C. 423 (reference (q)).

Number 4 (5 U.S.C. 552 (b)(4) (reference (a))). Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. *Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm (see paragraph h., below). If the information qualifies as exemption 4 information, there is no discretion in its release.* Examples include :

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals *set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal*, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also *paragraph 5-207 b., below, this Regulation. Additionally, when the provisions of 10 U.S.C. 2305(g) (reference (p)), and 41 U.S.C. 423 (reference (q)) are met, certain proprietary and source selection information may be withheld under exemption 3.*



c. Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6 (5 U.S.C. 552 (b)(6) (reference (a))). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, *other than the person about whom the information is about*, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. *If the information qualifies as exemption 6 information, there is no discretion in its release.*

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

(1) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. Home addresses are normally not releasable without the consent of the individuals concerned. *This includes lists of home addressees and military quarters' addressees without the occupant's name.* In addition, DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(1) Privacy Interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and

maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(2) *Names and duty addresses published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.*

c. *This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24 (reference (u)).*

d. *When the subject of an investigative report is the requester of the record and the report is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11-R (reference (v)), and by exemption 6 of the FOIA.*

e. *A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.*

f. *This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.*

(1) *A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.*

(2) *Refusal to confirm or deny should not be used when (a) the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; (b) the person initiated or directly participated in an investigation that lead to the creation of an agency record seeks access to that record; or (c) the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph Number 6c., above.*